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DELTA STEWARDSHIP COUNCIL

A California State Agency

August 17, 2016

Bill Orme
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Water Quality Certification and Wetlands Unit
State Water Resources Control Board
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RE: Proposed Procedures for Discharges of Dredged or Fill Materials to Waters of the State

Dear Mr. Orme:

Thank you for the opportunity to comment on the *Proposed Procedures for Discharges of Dredged or Fill Materials to Waters of the State*, hereafter referred to as the "*Procedures*". We understand that the State Water Resources Control Board (State Water Board) is considering amendments to the *Water Quality Control Plan for Ocean Waters of California* and the *Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries* to establish the *Procedures*. The amendments would promote consistency between state policies and the Federal Clean Water Act (CWA), and between the state and regional water boards, as well as clarify definitions of and extend protections to waters of the state and facilitate permitting of habitat restoration projects. Council staff congratulates the State Water Board on nearing completion of more than a decade of work to provide increased protection for California's aquatic resources.

As you may know, the Delta Stewardship Council (Council) is a state agency created by the California Legislature through the Delta Reform Act of 2009 to develop and implement a legally enforceable long-term management plan for the Delta and Suisun Marsh. The Delta Plan applies a common sense approach based on the best available science to achieve the coequal goals of protecting and enhancing the Delta ecosystem and providing for a more reliable water supply for California, while protecting and enhancing the unique cultural, recreational, and agricultural values of the Delta as an evolving place. The Council plays an important coordination role, working with partner agencies to foster collaboration among State, local, and federal interests in the Delta and Suisun Marsh. This letter was prepared solely with this coordination perspective in mind.

Comments on the Proposed Procedures

First and foremost, we appreciate the importance of the *Procedures* in addressing current gaps in protection for state waters and inconsistencies in procedures for the review and approval of applications between the state and regional water boards, and the State Water Board and the U.S. Army Corps of Engineers (USACE). The *Procedures* address these issues and support improved

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

protections and restoration outcomes for wetlands and waters of the state, including those found in the Delta and the Suisun Marsh. The San Francisco Bay-Delta is the largest estuary on the West Coast of the United States, and contains large areas of aquatic habitats that support many wetland-dependent species, and thousands of acres of wetland restoration is planned for the region. As such, any policy that may influence such habitats and their restoration has important implications for a range of species and ultimately, the health of the Delta. Overall, the *Procedures* are detailed, appropriate, and address gaps in protection and longstanding inconsistencies in procedures between different agencies and water boards. The *Procedures*, if adopted and implemented, will support implementation of the Delta Plan, especially aspects related to ecosystem restoration. Specific aspects of the *Procedures* are highlighted below.

1. **Expanded Definitions of Waters of the State.** As noted in the staff report accompanying the *Procedures*, several types of waterbodies are not covered under definitions in the Clean Water Act. These waterbodies, which include disconnected and non-navigable waters such as vernal pools (such as those found in the Delta) and ephemeral streams (which provide important habitat for steelhead that migrate through the Delta), are some of the most ecologically valuable – and most threatened – in California. Expanding definitions of waters of the state to include such waterbodies is warranted and could help avoid further loss. This change would support the conservation of existing Delta habitats.
2. **Consistent Wetland Delineation Procedures.** Council staff supports the proposal to establish consistent State Water Board wetland definitions, and delineation methods based on USACE guidelines, for all Water Boards. This would make it easier to identify protected wetlands, while also accelerating permit application and approval processes. The Delta and Suisun Marsh are regulated by two different Regional Water Quality Control Boards, and consistent methods between the two regions would help with Delta Plan implementation.
3. **Consistent Permitting of Discharge of Fill and Dredged Materials.** Regulation of discharge of fill and dredged materials to waters of the state is an important means of protecting aquatic resources, but inconsistent procedures for the review and approval of applications has resulted in delays to beneficial restoration projects. Council staff supports the proposed approach to regulating discharges of fill and dredged materials, which would further promote consistency between all Water Boards and federal application processes and help restoration projects move ahead more quickly.
4. **Prioritization of Avoidance.** The proposed *Procedures* would require that applicants first avoid, then minimize, and finally compensate through mitigation for impacts from discharges of dredged or fill material to waters of the state. Council staff supports this approach.
5. **No Mitigation Requirement for Restoration Projects.** Council staff supports the proposed exemption on mitigation requirements for restoration projects, which would accelerate and lower the cost of such projects. Furthermore, it is our understanding that fill of a slightly subsided area to restore it to tidal elevation in advance of breaching a levee to create a tidal marsh could be permitted as an exempt restoration activity. Exempting such fill from mitigation requirements could accelerate habitat restoration and respond to sea level rise in the Delta in certain locations.

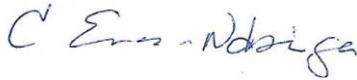
- 6. Monitoring and Adaptive Management.** Monitoring and adaptive management are necessary to ensure that projects are implemented and regulatory requirements are met; to determine whether projects are on track to achieve their habitat protection and restoration goals; how well they meet, in aggregate, anticipated landscape evolutionary trajectories (i.e., position on a performance curve); and, if they are not on track, to make changes to the project or suite of projects so that they individually and cumulatively meet performance standards. The *Procedures* present an opportunity to contribute to effective monitoring which could inform adaptive management programs and help track restoration across the state. For compensatory mitigation projects, the *Procedures* will require baseline information, a description of parameters to be monitored, performance standards, an adaptive management plan, and financial assurances. As the State Water Board finalizes these procedures, we recommend that language be added that would require that permits for habitat protection and restoration include monitoring and adaptive management requirements, as appropriate to the scope of the proposed action. Given the watershed approach presented in the proposed procedures, such requirements could support coordinated monitoring programs at the watershed/landscape scale. Such monitoring data could also contribute to the adaptive management of Delta ecosystem restoration required by the Delta Plan. Finally, we feel that monitoring data from all project types, restoration or otherwise, should be made publically available through the use of powerful existing tools such as EcoAtlas, which provides easy access to wetland and waterway data for California, including the Delta.
- 7. Application Exclusion for Working Lands, With Limitations.** The *Procedures* will be consistent with exemptions to application procedures for select farming activities, specified under CWA section 404 and USACE regulatory guidance letters. The *Procedures* will also continue to exclude certain prior converted croplands (PCC) from the application procedures for discharges of fill and dredged materials. However, the PCC exclusion will now not apply if the PCC is abandoned or changes to a non-agricultural use. Council staff commends the State Water Board for taking note of and respecting exemptions granted for working agricultural lands, while recognizing the value of restoration in some prior converted croplands that have transitioned into wetlands. This is especially important in the Delta, where some previous agricultural areas have flooded and now provide essential fish and wildlife habitats or support other ecosystem functions.
- 8. Permit Coordination.** Council staff appreciates the refinement of the *Procedures* to better align permitting for federal and state, and state and regional entities. Building on this, Council staff recommends reinitiating a common application process for permitting. A single document could be designed to be used in place of different applications for state, federal, and some regional agencies, making the application process more clear and consistent. (The completed common application would be submitted directly to each agency with jurisdiction over the project.) As the *Procedures* are finalized, Council staff wishes to express support for such a scheme at the state level. As the agency developing these *Procedures*, the State Water Board could do much to facilitate more efficient permitting for aquatic resources by implementing a common application process.

Final Remarks

Overall, we are supportive of the Water Board's *Procedures*, which will improve opportunities for restoration, regional permits, and adaptive management and monitoring. The recommendations noted above could help further these opportunities. If you need any clarification regarding our comments, I encourage you to contact Jessica Davenport at jessica.davenport@deltacouncil.ca.gov or 916-445-2168.

Once again, we congratulate you on the progress made to date, and look forward to the final procedures.

Sincerely,

A handwritten signature in blue ink, reading "C Enos-Nobriga".

Cassandra Enos-Nobriga
Deputy Executive Officer
Delta Stewardship Council